

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION**

MICHAEL HAYWOOD,)
)
)
Plaintiff,)
)
)
V.) **Case No.: 1:21-cv-01112-LCB-HNJ**
)
)
AARON GREEN,)
)
)
Defendants.)

ORDER

On August 9, 2021, U.S. Magistrate Judge Herman N. Johnson, Jr., issued a Report and Recommendation in accordance with [28 U.S.C. § 636\(b\)\(1\)](#) recommending that the Court dismiss this action without prejudice under [28 U.S.C. § 1915A\(b\)\(1\)](#) for failure to state a claim upon which relief can be granted. (Doc. 19). No party has objected to the Report and Recommendation.

If a party objects to a portion of a Magistrate Judge's report or proposed findings or recommendations, the district court must review *de novo* those portions of the report to which the party has specifically objected. [28 U.S.C. § 636\(b\)\(1\)](#); [FED. R. CIV. P. 72\(b\)](#). The standard of district-court review for those portions of the report or proposed findings or recommendations that remain unchallenged has not been resolved by the Eleventh Circuit; none of its published opinions supplies the missing standard.

But in an unpublished per curiam opinion, the Eleventh Circuit intimated the standard it's most likely to adopt, observing that “[m]ost circuits agree” the district court “need not conduct a *de novo* review” absent timely objections, “but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Macort v. Prem, Inc.*, 208 F. App'x 781, 784 (11th Cir. 2006) (per curiam) (citing *Diamond v. Colonial Life & Accident Ins.*, 416 F.3d 310, 315 (4th Cir. 2005); *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999); *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989); and *Drywall Tapers & Pointers v. Local 530*, 889 F.2d 389, 395 (2d Cir. 1989)) (quotations omitted). And in practice, most district courts in the Eleventh Circuit already apply this clear-error standard. *See, e.g., United States v. Middleton*, 595 F. Supp. 3d 1277, 1282 (N.D. Ga. 2022); *Nationstar Mortg., LLC*, 264 F. Supp. 3d 1301, 1302 (S.D. Fla. 2017); *Doe v. Univ. of Alabama in Huntsville*, 177 F. Supp. 3d 1380, 1384 (N.D. Ala. 2016). Given this practice and precedent, the Court likewise adopts the clear-error standard for its review of unchallenged portions of a Magistrate Judge's proposed findings and recommendations. Finally, the district court may, in its review, “accept, reject, or modify, in whole or in part,” the Magistrate Judge's findings or recommendations. [28 U.S.C. § 636\(b\)\(1\)\(C\)](#).

Having reviewed the proposed findings and recommendations for clear error, the Court concludes that the Magistrate Judge's Report and Recommendation

(Doc. 19) should be **ACCEPTED** and hereby **ADOPTS** it as the findings of the Court. The case is therefore **DISMISSED WITHOUT PREJUDICE**.

The Clerk of Court is **DIRECTED** to close the case.

DONE and **ORDERED** this September 27, 2023.



LILES C. BURKE
UNITED STATES DISTRICT JUDGE